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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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08/484,928 06/07/95 MICHELSON

EXAMINER

QM32/1001

LEWIS ANTEN
SUITE 411
16830 VENTURA BOULEVARD
ENCINO CA 91436

ART UNIT	PAPER NUMBER
BROWN, M	15

DATE MAILED:

10/01/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-26, 28-51, 53-75, 77-82, 84-86, 88, 101-132 and 135-167 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-26, 28-51, 53-75, 77-82, 84-86, 88, 101-132 and 135-167 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

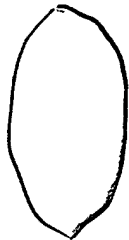
- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 5-7, 9-10, 17-22, 26-32, 34-35, 42-48, 53-57, 59-60, 67-72, 77-82, 89-94, 98-105, 107-108, 115-120, 124-126, and 131-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '638.

Kuslich discloses in figure 2 a spinal implant, substantially as claimed. However, Kuslich does not disclose the implant being frustoconical. Kuslich teaches in figure 2A a frustoconical shaped implant. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the implant as disclosed by Kuslich could be fabricated in a frustoconical shape as taught by Kuslich in order to allow the tapered leading end to be easily inserted into the vertebrae.

3. Claims 8, 13, 33, 38, 58, 63, 80, 85, 106, 111, 128 and 134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '638 along with Ray.
4. Kuslich discloses in figure 2 a spinal implant, substantially as claimed. Kuslich teaches in figure 2A a frustoconical spinal implant. Ray '260 teaches in figure 1 a spinal implant comprising

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a bioabsorbable material and a bone engaging means that is mesh-like. It would have been obvious to one having ordinary skill in the art that the time that the invention was made that the implant as disclosed by Kuslich could be fabricated on bioabsorbable material and a bone engaging means as taught by Ray. The bioabsorbable material would allow the implant to absorb into the vertebrae. The mesh material would attract bone growth to the implant.

5. Claims 11, 14-16, 23-24, 36, 39-41, 49-50, 61, 64-66, 73-74, 83-84, 86-88, 95-96, 109, 112-114, 121-122, 127, 129, 133 and 135 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '638, along with Brantigan '915.

Kuslich discloses in figure 2 a spinal implant, substantially as claimed. Kuslich teaches in figure 2A a frustoconical spinal implant, substantially as claimed. Brantigan teaches in figures 6 and 8 a spinal implant comprising a bone engaging means that includes posts (32c,32d), surface roughening that include knurling (fig. 6) and wells (the spaces between the post). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the spinal implant as disclosed and taught by Kuslich could be fabricated with wells, post, knurling or roughing as taught by Brantigan in order to use these elements to enhance bone growth to the implant.

Conclusion

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
September 30, 1999

A handwritten signature in cursive script that reads "Michael A. Brown".

MICHAEL A. BROWN
PRIMARY EXAMINER